



BELL, BOYD & LLOYD LLC
P.O. Box 1135
Chicago IL 60690-1135

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OFFICE OF PETITIONS

In re Application of :
Moriguchi et al. :
Application No. 10/826,233 : DECISION ON PETITION
Filed: April 16, 2004 :
Attorney Docket No. 112857-500 :

This is a decision on the renewed petition filed December 16, 2004, requesting that the above-identified application be accorded the original filing date of April 16, 2004, with 75 pages of specification as part of the original disclosure.

On April 16, 2004, applicants deposited the above-identified application. However, the date-stamped postcard receipt contained a notation by a USPTO employee indicating nonreceipt of the 75 page specification. In response, on May 7, 2004, applicants submitted a "Response to Return Receipt Postcard Notation" with a duplicate copy of the specification. Thereafter, the Office of Initial Patent Examination accorded the application a filing date of May 7, 2004, the date of receipt of the pages of specification.

On August 18, 2004, the Office of Initial Patent Examination mailed applicants a Notice of Omitted Item(s) in a Nonprovisional Application, indicating that the application had been accorded a filing date of May 7, 2004, and advising applicants that pages 68, 69, and 71 of the specification appeared to have been omitted.

In response, on October 18, 2004, applicants submitted the original petition and the petition fee. Applicants stated that the present application is a continuation application of Application No. 09/292,834, which issued a U.S. Patent No. 6,764,767 on July 20, 2004. Applicants further stated that the entire disclosure of the prior application was incorporated by reference.

It is noted that the application transmittal letter identified this application as a continuation application of prior application No. 09/292,834, and specifically incorporated by reference the disclosure of the prior application.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (Emphasis supplied).

Unfortunately, the original petition was dismissed by the decision of November 15, 2004, because applicants failed to submit pages 68, 69 and 71 of the specification with the original petition.

On December 16, 2004, applicants filed the present renewed petition accompanied by a copy of pages 68, 69 and 71 of the specification. Applicants again request that the Office accord the application a filing date of April 16, 2004, with 75 pages of specification, including pages 68, 69 and 71.

In view of above, the petition is **granted**.

A second petition fee is not necessary. Accordingly, the \$400.00 fee will be refunded to Deposit Account No. 02-1818.

The Office of Initial Patent Examination is directed to accord the application a filing date of April 16, 2004, using the pages 1-67 and 70 submitted on May 7, 2004, and pages 68, 69 and 71 submitted with the petition filed on December 16, 2004. The Office is also directed to mail a corrected filing receipt.

Application No. 10/826,233

Page 3

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina P. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions